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September 28, 1999

The Honorable Janet Reno
Attorney General
U.S. Department of Justice
Tenth and Constitution Avenue, N.W.
Washington, DC 20530

Dear General Reno:

On July 15, 1999, Deputy Assistant Attorney General John C. Keeney, Public Integrity Section Chief Lee J. Radek and Faith Burton from the Office of Legislative Affairs met with representatives of the Committee on Government Reform and the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs. They discussed the Department of Justice's decision not to indict former White House Associate Counsel, now Deputy Counsel, Cheryl Mills for perjury and obstruction of justice.

During this discussion, your staff explained the rationale for the Justice Department's refusal to prosecute Ms. Mills. As part of that discussion, it was related to my staff by Mr. Radek that a lack of consensus within the Committee was a factor in the Department's decision not to prosecute Ms. Mills, or even initiate its own investigation of the matter. Mr. Radek went on to say that since the Committee as a whole "did not feel victimized," the Justice Department's "enthusiasm [to investigate or prosecute] was dampened."

I find this revelation to be deeply troubling. The notion that disagreement in a political body would influence the Justice Department's decision-making is problematic. The examination of the facts of this case -- or any case -- should not be viewed through the lens of politics. In essence, Mr. Radek has suggested that one political party, by virtue of what the party whip convinces his colleagues to do, has a full or partial veto of Justice Department prosecutions. I am surprised that an Attorney General would allow such an absurd position to take root at the Justice Department.

The extraordinary importance of Mr. Radek's observation goes beyond academic interest. From my perspective, there has been, on occasion, a conscious effort to bypass fact and label legitimate Congressional oversight as "partisan." This was highlighted in a recent book written by Elizabeth Drew. In *The Corruption of American Politics*, she wrote about the White House strategy for dealing with scandals:

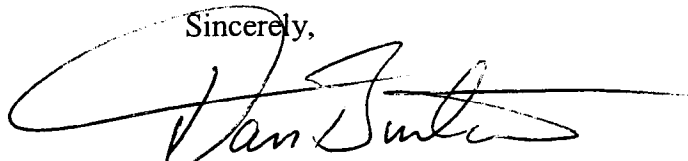
[Don] Goldberg a lanky bearded thirty-eight-year-old [former White House lawyer], candidly explained to me the White House strategy for adversarial hearings by the Republican Congress. "It's an obvious strategy," he said. "On the Hill, if you don't have much to go on, you decry the partisanship, and the print reporters will write in the first or second paragraph, and the TV stories will begin, 'In a hearing mired in partisanship,' and then they get to the subject of the hearing and you've won. That's Damage Control 101.

While I was surprised that the White House would be so brazen as to admit how it approached Congressional oversight, the fact of this strategy was hardly a surprise. It was, however, a great surprise for me to learn that the Department of Justice would reward this unfortunate tactic by factoring in – to any degree, even the slightest – the presence of "partisan" positions taken in Congress. Mr. Radek's admission that the lack of a bipartisan mandate for criminal referrals is a factor in the Department's decision-making is not only an insult to prosecutors, it is also a capitulation to a strategy that is practiced in complete disregard of facts or the public good. That one of the individuals who has made many of the most important decisions in the campaign finance investigation would interpret the law in such a fashion is, to say the least, extraordinary.

I ask that you repudiate Mr. Radek's position and instruct your staff that henceforth decisions to prosecute or decline prosecution will be made on the facts, and not – even to the slightest degree – on whether a political party has cast a pall of "partisanship" over a particular issue. Mr. Radek's revelation was tantamount to an admission that you have given the Democratic minority in Congress partial veto power over criminal referrals made pursuant to 18 U.S.C. 1001. Mr. Radek's position also casts doubt upon representations made by Assistant Attorney General James Robinson in his July 8, 1999, letter to Chairman McIntosh, where he said: "It was on the basis of such an analysis, *wholly unrelated to political considerations*, that career prosecutors in the Criminal Division reached their decision concerning the allegations against Ms. Mills." (emphasis added)

This is one more example that calls into question the judgment of those you have relied upon in the campaign finance investigation. I can only wonder how many decisions made by Mr. Radek relied upon his extremely flawed understanding of how the Justice Department should conduct itself.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dan Burton", with a large, sweeping flourish extending to the left.

Dan Burton
Chairman

cc: The Honorable Henry Waxman
The Honorable David McIntosh
David Vicinanza, Chief, Campaign Financing Task Force
Jon Jennings, Acting Assistant Attorney General, Office of Legislative Affairs